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1 The undersigned government counsel, who recently took over responsibility of this case
2 from former AUSA Allison Danner, was elsewhere in the District on government business and
3 not able to be present at the hearing. Subsequent to the hearing, government counsel had the
4 opportunity to confer, several times, with former defense counsel Jonathan McDougall regarding
5 various issues, including the handling of discovery.

6 Mr. McDougall advised that he was under the impression that the court's intent was for
7 government counsel to pick up his file and deliver it to the defendant, who is in custody.
8 However, this appeared to be problematic on several grounds, including the fact that Mr.
9 McDougall had made redactions to some, but not all documents, and had provided some, but not
10 all, of the documents which were provided to him to the defendant.

11 The undersigned government counsel harbors concerns regarding taking possession of
12 the files and work product of prior defense counsel and possibly injecting error into the record.
13 Moreover, the prospect of visiting the defendant at the Santa Clara County Jail to engage in plea
14 negotiations (if this what is contemplated by the court) would appear to create a substantial
15 likelihood, notwithstanding Fed. R. Crim. Proc. 11, that if those negotiations fail, he would be
16 chilled, if not precluded by conflict, from litigating the case.

17 Mr. McDougall concurs that the appointment of advisory counsel would expedite
18 transmittal of the defense file to Mr. Weinstein. This appointment would also create a conduit
19 through which the Government could conduct plea negotiations with the Pro Se defendant, and
20 also provide assistance to the defendant in any number of ways.

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MOTION
CR-11 - 00185 - LHK

1 For the above stated reasons, it is submitted that the appointment of advisory counsel
2 would both protect the record and expedite the disposition of this case.

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4 Respectfully submitted,

5 DATED: September 26, 2012.
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MELINDA HAAG
United States Attorney

11 /s/
12 THOMAS O'CONNELL
13 Assistant United States Attorney

14 DENIED. Mr. Jonathan
15 Mc Dongall should deliver
16 the defense file to the Defendant.
17 The Court never intended for the
18 government counsel to deliver the
19 defense file to the Defendant.
20 Mr. Mc Dongall was retained
21 counsel for delivering the defense
22 file is his responsibility.

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Lucy H. Koh

U.S. District Judge

MOTION
CR-11 - 00185 - LHK

Date 9/27/12